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THE opinion of the Supreme Court of Appeals of Virginia in *Eaves* v. *Vial*, just handed down (2 Va. Sup. Ct. Rep. 131), contains a valuable discussion of the application, in practice, of the statute of parol agreements. It is held that the statute need not be specially pleaded either at law or in equity; but that it may be set up under the general issue at law, or in equity, under a general denial of the contract charged in the bill. It was further held, however, and properly, as it would seem, that if the defendant permits the alleged contract to be proved by parol without excepting to the testimony, he thereby waives the defense of which he might have availed himself under the statute.

The English rule, as stated by Stephen, is that the plaintiff need not in his declaration allege that the contract is in writing, but that the defendant, if he proposes to rely upon the statute, must plead it specially. Stephen on Pleading, 375–6. Prof. Minor, while "not disposed to controvert the reasonableness and propriety of this distinction, in the circumstances supposed, in a declaration and in a plea," yet doubts the authority (*Case* v. *Barber*, T. Raym. 450) upon which Stephen apparently relies. 4 Minor's Inst. (3d ed.) 1226.

The rule as laid down by Stephen, that the plaintiff need not allege the writing, but that the defendant must set up the absence of the writing by a special plea, is sustained by the great weight of authority both in this country and in England. But the decisions are not harmonious, and the view taken by the Virginia court is not without respectable authority to support it. The cases are collected in 9 Enc. Pl. & Pr. 705–709. It is possible that there is a distinction between the rule at law and that prevailing in equity—though no case is re-

called in which the distinction is pointed out. Most, if not all, of the cases cited in the principal case arose in equity.

Where the declaration on bill shows on its face that the contract is not in writing, the defendant may avail himself of the statute by demurrer. *Clanton* v. *Scruggs*, 95 Ala. 279; *Randall* v. *Howard*, 2 Black (U. S.) 585; *Cozine* v. *Graham*, 2 Paige, 177; *Linn, etc. Co.* v. *Terrill*, 13 Bush, 463; *Elliott* v. *Jenness*, 111 Mass. 29; *Wood* v. *Midgley*, 5 DeG. M. & G. 41.